

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

KABITA CHOUDHURI,

Plaintiff,

vs.

WELLS FARGO BANK, N.A.; CIT GROUP,
INC.; FIRST AMERICAN LOAN STAR;
DEUTSCHE BANK USA; TODD BELL
AND MEG DEGROOTE,

Defendants.

Case No: C 11-00518 SBA

ORDER

Docket 46

On June 15, 2011, the Court granted Defendants' motion to dismiss (Dkt. 4) and granted Plaintiff leave to amend her claim for damages under the Truth in Lending Act ("TILA"). Plaintiff has submitted an ex parte request for an extension of time until August 1, 2011 to file her amended complaint. Dkt. 46. The amount of time requested by Plaintiff is excessive, and would unduly delay these proceedings. However, in consideration of Plaintiff's pro se status, and the lack of opposition from Defendants, the Court finds that a brief extension is warranted.

Plaintiff also requests that the Court "correct" its June 15, 2011 Order to indicate that the date she consummated her mortgage was December 22, 2005, not December 22, 2004. The Court declines to do so because there was no error. The Complaint expressly alleged that, "On December 22, 2004 Plaintiff signed a mortgage contract with Wells Fargo Bank." Compl. at 2. Based on that allegation, the Court concluded that Plaintiffs' claim for rescission was time-barred under the three year statute of repose set forth in 15 U.S.C. § 1635(f). See Miguel v. Country Funding Corp., 309 F.3d 1161, 1163 (9th Cir. 2002).

In her motion, Plaintiff now claims that the Complaint's reference to December 22, 2004, was in error and that, in fact, the date of the transaction was December 22, 2005. In addition, Plaintiff claims that she timely rescinded by filing "a rescission claim" in state

1 court on June 26, 2008. Under Federal Rule of Civil Procedure 15(a), leave to amend a
2 complaint should be “freely given when justice so requires.” Fed.R.Civ.P. 15(a)(2). Rule
3 15 “is to be applied with extreme liberality.” Eminence Capital, LLC v. Aspeon, Inc., 316
4 F.3d 1048, 1051 (9th Cir. 2003). Therefore, Plaintiff is granted leave to amend to correct
5 the date of her transaction with Wells Fargo Bank to December 22, 2005, and that she
6 timely provided a notice of rescission. Accordingly,

7 IT IS HEREBY ORDERED THAT:

8 1. Plaintiff’s ex parte application is GRANTED IN PART and DENIED IN
9 PART.

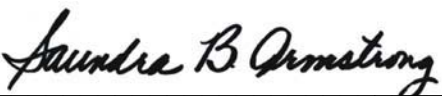
10 2. Plaintiff’s request to extend the deadline to file her amended complaint to
11 August 1, 2011 is DENIED. However, Plaintiff shall have until July 15, 2011, to file her
12 First Amended Complaint.

13 3. Plaintiff’s request for the Court to “correct” its June 15, 2011, Order is
14 DENIED. However, Plaintiff is GRANTED to leave to amend the allegations of her
15 Complaint with respect to her claim for rescission under TILA to allege that the underlying
16 transaction took place on December 22, 2005, and that she provided notice of rescission by
17 filing said request in state court on June 26, 2008.

18 4. This Order terminates Docket 46.

19 IT IS SO ORDERED.

20 Dated: June 24, 2011


SAUNDRA BROWN ARMSTRONG
United States District Judge